

number of employees for all pay periods from January 1, 2005 through December 31, 2005.

(3) Had a corporate average crude oil capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 2005.

(4) Following the submission of a small refiner application, pursuant to § 80.1340, has been approved as a small refiner for this subpart.

(b) For the purpose of determining the number of employees and the crude oil capacity under paragraph (a) of this section, the following determinations shall be observed:

(1) The refiner shall include the employees and crude oil capacity of any subsidiary companies, any parent company, subsidiaries of the parent company in which the parent has a controlling interest, and any joint venture partners.

(2) For any refiner owned by a governmental entity, the number of employees and total crude oil capacity as specified in paragraph (a) of this section shall include all employees and crude oil production of the government to which the governmental entity is a part.

(3) Any refiner owned and controlled by an Alaska Regional or Village Corporation organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601) is not considered an affiliate of such entity, or with other concerns owned by such entity, solely because of their common ownership.

(c) Notwithstanding the provisions of paragraph (a) of this section, a refiner that reactivates a refinery that it had previously operated, and that was shut down or non-operational for the entire period between January 1, 2005 and December 31, 2005, may apply for small refiner status in accordance with the provisions of § 80.1340.

**§ 80.1339 Who is not eligible for the provisions for small refiners?**

The following are not eligible for the hardship provisions for small refiners:

(a) A refiner with one or more refineries built after December 31, 2005.

(b) A refiner that exceeds the employee or crude oil capacity criteria under § 80.1338 but that meets these criteria after December 31, 2005, regardless of whether the reduction in em-

ployees or crude capacity is due to operational changes at the refinery or a company sale or reorganization.

(c) Importers.

(d) A refiner that produce gasoline other than by processing crude oil through refinery processing units.

(e)(1) A small refiner approved under § 80.1340 that subsequently ceases production of gasoline from processing crude oil through refinery processing units, employs more than 1,500 people, or exceeds the 155,000 bpcd crude oil capacity limit after December 31, 2005 as a result of merger with or acquisition of or by another entity, is disqualified as a small refiner, except that this shall not apply in the case of a merger between two previously approved small refiners. If disqualification occurs, the refiner shall notify EPA in writing no later than 20 days following this disqualifying event.

(2) Except as provided under paragraph (e)(3) of this section, any refiner whose status changes as specified in paragraph (e)(1) under this paragraph (b) shall meet the applicable standards of § 80.1230 within 30 months of the disqualifying event for all its refineries. However, such period shall not extend beyond December 31, 2014.

(3) A refiner may apply to EPA for an additional six months to comply with the standards of § 80.1230 if it believes that more than 30 months will be required for the necessary engineering, permitting, construction, and start-up work to be completed. Such applications must include detailed technical information supporting the need for additional time. EPA will base its decision to approve additional time on the information provided by the refiner and on other relevant information. In no case will EPA extend the compliance date beyond December 31, 2014.

(4) During the period provided under paragraph (e)(2) of this section, and any extension provided under paragraph (e)(3) of this section, the refiner may not generate gasoline benzene credits under § 80.1275(b)(3) for any of its refineries where under § 80.1342 the refiner was previously allowed to defer compliance with the standards in §§ 80.1230(a) and 80.1230(b).

(f) A small refiner approved under § 80.1340 which notifies EPA that it

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wishes to withdraw its small refiner status pursuant to § 80.1340(g).

[72 FR 8544, Feb. 26, 2007, as amended at 75 FR 26131, May 11, 2010]

### § 80.1340 How does a refiner obtain approval as a small refiner?

(a) Applications for small refiner status must be submitted to EPA by December 31, 2007.

(b) For U.S. Postal delivery, applications for small refiner status must be sent to: Attn: MSAT2 Benzene, Mail Stop 6406J, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. For commercial delivery: MSAT2 Benzene, 202–343–9038, U.S. Environmental Protection Agency, 1310 L Street, NW., Washington, DC 20005.

(c) The small refiner status application must contain the following information for the company seeking small refiner status, and for all subsidiary companies, all parent companies, all subsidiaries of the parent companies, and all joint venture partners:

(1) *Employees.* For joint ventures, the total number of employees includes the combined employee count of all corporate entities in the venture. For government-owned refiners, the total employee count includes all government employees.

(i) Pursuant to paragraph (c) of this section, a listing of each company facility and each facility's address where any employee, as specified in paragraph (a)(1) of this section, worked during the 12 months preceding January 1, 2006.

(ii) The average number of employees at each facility based upon the number of employees for each pay period for the 12 months preceding January 1, 2006.

(iii) The type of business activities carried out at each location.

(iv) In the case of a refiner that reactivates a refinery that it previously owned and operated and that was shut down or non-operational between January 1, 2005 and January 1, 2006, include the following:

(A) Pursuant to paragraph (c) of this section, a listing of each company refinery each refinery's address where any employee, as specified in paragraph (a)(1) of this section, worked

since the refiner acquired or reactivated the refinery.

(B) The average number of employees at any such reactivated refinery during each calendar year since the refiner reactivated the refinery.

(C) The type of business activities carried out at each location.

(2) *Crude oil capacity.*

(i) The total corporate crude oil capacity of each refinery as reported to the Energy Information Administration (EIA) of the U.S. Department of Energy (DOE), for the period January 1, 2005 through December 31, 2005.

(ii) The information submitted to EIA is presumed to be correct. In cases where a company disagrees with this information, the company may petition EPA with appropriate data to correct the record when the company submits its application for small refiner status.

(3) The type of business activity carried out at each location.

(4) For each refinery, an indication of the small refiner option(s), pursuant to § 80.1342, intended to be utilized at the refinery.

(5) A letter signed by the president, chief operating officer or chief executive officer of the company, or his/her designee, stating that the information contained in the application is true to the best of his/her knowledge, and that the company owned the refinery as of January 1, 2006.

(6) Name, address, phone number, facsimile number, and e-mail address of a corporate contact person.

(d) Approval of a small refiner status application will be based on the information submitted under paragraph (c) of this section and any other relevant information.

(e) EPA will notify a refiner of approval or disapproval of small refiner status by letter.

(1) If approved, all refineries of the refiner may defer meeting the standard specified in § 80.1230(a) until the annual averaging period beginning January 1, 2015, and the standard specified in § 80.1230(b) until the averaging period beginning July 1, 2016.

(2) If disapproved, all refineries of the refiner must meet the standard specified in § 80.1230(a) beginning with the